

ASSEMBLY BILL

No. 452

Introduced by Assembly Member Ma

February 15, 2011

An act to amend Section 637.7 of the Penal Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 452, as introduced, Ma. Electronic tracking devices: invasion of privacy.

Existing law prohibits a person or entity from using an electronic tracking device to determine the location or movement of a person. This prohibition does not apply when the owner of a vehicle has consented to the use of the electronic tracking device with respect to the vehicle, or to a law enforcement agency.

This bill would recast this provision to prohibit a person or entity from using, attempting to use, or knowingly employing or engaging a 3rd party to use or attempt to use, an electronic tracking device to determine the location or movement of a person without the consent of that person. This bill would provide that a person who voluntarily uses a device knowing that it is being used to determine his or her location or movement is deemed to have consented to the use of the device.

This bill would additionally provide that this prohibition does not apply to the parent or legal guardian of a minor child or conservator of an incompetent person for purposes of tracking that minor or incompetent person, except as specified. The bill would also provide that this prohibition does not apply to the provision of commercial services, as provided.

Existing law defines an electronic tracking device as any device attached to a vehicle or other moveable thing that reveals its location or movement by the transmission of electronic signals.

This bill would instead define an electronic tracking device as any device that permits another person or entity to remotely determine or track the position or movement of a person or object.

Existing law provides that a violation of these provisions is a misdemeanor, punishable by imprisonment in a county jail for not more than 6 months, by a fine not to exceed \$1,000, or both that fine and imprisonment.

This bill would provide that a violation of these provisions is a misdemeanor, punishable by imprisonment in a county jail for not more than 6 months, by a fine not to exceed \$2,500, or by both that fine and imprisonment. This bill would provide that a violation of these provisions by a person who is prohibited by a court order from harassing, following, surveilling, or stalking a person protected by that order is punishable by imprisonment in a county jail for not more than one year, by a fine not to exceed \$5,000, or by both that fine and imprisonment.

By increasing the punishment for a crime, and by creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares that the right
- 2 to privacy is fundamental to a free and civilized society and that
- 3 the increasing use of electronic surveillance devices is eroding
- 4 personal liberty. The Legislature declares that the electronic
- 5 tracking of a person's location without that person's knowledge
- 6 and consent violates that person's reasonable expectation of
- 7 privacy.
- 8 SEC. 2. Section 637.7 of the Penal Code is amended to read:
- 9 637.7. (a) No person or entity in this state shall use, *attempt*
- 10 *to use, or knowingly employ or engage a third party to use or*

1 *attempt to use, an electronic tracking device to determine the*
2 *location or movement of a person without the consent of that*
3 *person.*

4 ~~(b) This section shall not apply when the registered owner,~~
5 ~~lessor, or lessee of a vehicle has consented to the use of the~~
6 ~~electronic tracking device with respect to that vehicle.~~

7 ~~(c) This section shall not apply to the lawful use of an electronic~~
8 ~~tracking device by a law enforcement agency.~~

9 *(b) A person is deemed to have consented to the use of an*
10 *electronic tracking device when he or she voluntarily uses a device*
11 *that he or she knows is being used to determine his or her location*
12 *or movement.*

13 *(c) Subdivision (a) shall not apply to any of the following:*

14 *(1) The registered owner, lessor, or lessee of a vehicle who has*
15 *consented to the use of the electronic tracking device with respect*
16 *to that vehicle.*

17 *(2) The lawful use of an electronic tracking device by a federal,*
18 *state, or local law enforcement agency.*

19 *(3) The use of an electronic tracking device by a parent or legal*
20 *guardian or person having legal custody of a minor for purposes*
21 *of tracking that minor, unless there is a court order in place*
22 *prohibiting the parent, legal guardian, or other person having*
23 *legal custody of the minor from harassing, following, surveilling,*
24 *or stalking the minor.*

25 *(4) The use of an electronic tracking device by a conservator*
26 *or guardian of an incompetent person for the purposes of tracking*
27 *that incompetent person, unless there is a court order in place*
28 *prohibiting the conservator or guardian of the incompetent person*
29 *from harassing, following, surveilling, or stalking the incompetent*
30 *person.*

31 *(5) A commercial service, such as mobile telephone service or*
32 *vehicle safety or security service, which allows the service provider*
33 *to determine the location or movement of a device which is*
34 *provided to the customer of the commercial service and for the*
35 *purpose of providing the commercial service.*

36 *(d) As used in this section, "electronic tracking device" means*
37 *any device attached to a vehicle or other movable thing that reveals*
38 *its location or movement by the transmission of electronic signals*
39 *that permits another person or entity to remotely determine or*
40 *track the position or movement of a person or object, including,*

1 *but not limited to, a Global Positioning System or other electronic*
2 *tracking system.*

3 (e) A violation of this section is a misdemeanor *punishable by*
4 *imprisonment in a county jail not to exceed six months, or by a*
5 *fine not to exceed two thousand five hundred dollars (\$2,500), or*
6 *by both that fine and imprisonment.*

7 (f) *Notwithstanding subdivision (e), a violation of this section*
8 *by a person who is prohibited from harassing, following,*
9 *surveilling, or stalking another person or persons by a court order*
10 *who tracks the person or persons protected by that order is guilty*
11 *of a misdemeanor, punishable by imprisonment in a county jail*
12 *not to exceed one year, or by a fine not to exceed five thousand*
13 *dollars (\$5,000), or by both that fine and imprisonment.*

14 ~~(f)~~

15 (g) A violation of this section by a person, business, firm,
16 company, association, partnership, or corporation licensed under
17 Division 3 (commencing with Section 5000) of the Business and
18 Professions Code shall constitute grounds for revocation of the
19 license issued to that person, business, firm, company, association,
20 partnership, or corporation, pursuant to the provisions that provide
21 for the revocation of the license as set forth in Division 3
22 (commencing with Section 5000) of the Business and Professions
23 Code.

24 SEC. 3. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.